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American Bar Association

Executive Registry
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December 28, 1983

General Counsel
84-065

Honorable William Casey
Director, Central Intelligence Agency
Washington, D.C. 20505

Bill:

Dear Mr. Casey:

A Working Group under the aegis of the Task Force on Intelligence and Counter-Intelligence of the Standing Committee on Law and National Security of the American Bar Association is engaged in a study of oversight and accountability in the Intelligence Community. The purpose of this letter is to request your assistance in conducting that study.

The Working Group (Frederick P. Hitz, John H. Shenefield, Daniel B. Silver, John S. Warner and James W. Zirkle) is undertaking an evaluation of the existing structures and mechanisms which provide oversight in the Intelligence Community and which are intended to ensure that intelligence officers are accountable for their actions. The Working Group's goal is to aid public understanding and consideration of these important matters by producing a study based on an impartial process of information-gathering and analysis.

Institutional arrangements within the Intelligence Community have attained a state of relative stability after the turbulence of the mid-1970's. With the establishment of the permanent congressional oversight committees, the enactment of the Intelligence Oversight Act, the maintenance in successive Administrations of essentially the same system of internal Executive Branch organization, including oversight arrangements, and the demise of the charter legislation, existing institutional arrangements have been in place long enough to make it appropriate to begin considering whether they are fully satisfactory. Objective examination of this question is made easier, moreover, by the fact that, at the moment, the issue is not the subject of major partisan political debate. Thus the Working Group considers this an appropriate moment at which to address the question.

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As the principal basis for developing its conclusions the Working Group is soliciting the views of a select group of individuals, including yourself, who by virtue of a present or former position can offer informed observations on this subject. To structure the collection of views, the Working Group has prepared the enclosed questionnaire. We would greatly appreciate your answering the questionnaire and adding any additional views or comments you may have. Based on the responses received from knowledgeable experts such as yourself, the Working Group plans to draft a report for consideration by the full Standing Committee with a view towards its eventual publication. It is envisaged that the report will consist of a synthesis of the views received, but it is possible that the Committee will wish to quote from them or publish some or all in extenso. Thus, if you would prefer anonymity please so indicate in your response. It is envisaged that the final report will contain conclusions and recommendations (possibly with separate or dissenting views); these will be identified as those of the Standing Committee or Working Group alone and not those of any individual whose views were solicited.

The Working Group would like to have the responses to the questionnaire in hand by February 15, 1984. Your response by that date would be an important contribution to what we hope will be a worthwhile endeavor. If you have any questions, please contact one of the Working Group members at the address listed below. Please send your response to Frederick P. Hitz, The Flour Mill, Suite 302, 1000 Potomac Street, N.W., Washington, D.C. 20007. (202-965-6300).

Very truly yours,

Fred Hitz

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Enclosure
Questionnaire

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QUESTIONNAIRE

A. Criteria for Evaluation

Please indicate the degree of your agreement or disagreement (with any qualifications or reservations) with the following general propositions, which are advanced * as bases for the evaluation:

1. The activities of the intelligence agencies should be subject to congressional oversight, and the intelligence budget should be subject, as at present, to the controls inherent in the authorization process.

2. The exercise of congressional oversight and budgetary control at present are satisfactorily adapted to take account of the special circumstances of the intelligence agencies. These include, in particular, the needs for operational secrecy and flexibility and the necessity of giving foreign sources of information and assistance an adequate degree of confidence in the ability of the system to protect secrets.

3. The provision of intelligence should be an objective and nonpolitical activity. In order to foster this goal, the mechanisms of oversight and accountability for the intelligence agencies should be designed, to as great a degree as possible, so as to insulate the agencies from partisan political controversy; accordingly, the intelligence agencies should be protected from undue political pressures, whether coming from Executive Branch officials or the Congress.

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* These statements have been formulated to stimulate discussion and do not necessarily represent the views of the members of the Working Group.

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4. Because the activities of the intelligence agencies cannot be exposed to systematic public scrutiny, mechanisms of oversight and accountability must substitute for the role that informed public opinion plays in controlling the activities of other departments and agencies of the federal government. Thus, it is important that the structures of oversight and authorization be perceived by the public as effective and as making the intelligence agencies fully accountable to organs of government which in turn are accountable to the people.

5. It is important to ensure that the activities of the intelligence agencies are conducted in accordance with law and, even where there are no clear legal restrictions, that such activities meet a minimum standard of propriety. The latter concept is almost impossible to articulate, given the moral ambiguities that necessarily inhere in the conduct of intelligence activities. Nor is it easy to determine who should set whatever standards are to be applied. Nonetheless certain forms of conduct (e.g. assassination or torture) are widely considered as being unacceptable in all or virtually all circumstances, and a broader range of conduct would be considered by many as acceptable only in exigent circumstances. The structures of oversight and accountability in the intelligence agencies should contribute to the development of such standards and to their application in specific cases and, in particular, for these purposes should bring to bear the viewpoints of individuals outside the operational sphere of responsibility.

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6. The quality of the intelligence product should be given a very high priority in the oversight activities of both the Congress and the Executive Branch. The structures of oversight and accountability should be designed to provide objective and independent reviews of intelligence collection, analysis and reporting. The purpose of such reviews should be to ensure the proper utilization of budgetary resources, adequate attention to long-range planning and to meeting intelligence needs of national interest, and the objectivity and sophistication of analysis and the reported intelligence product.

7. Given the special nature of the intelligence function, the normal processes of the Judicial Branch are not well adapted to play a role in the oversight of intelligence operational activities, and an extension of the secret judicial techniques embodied in the Foreign Intelligence Surveillance Act, unless constitutionally mandated, seems unwise.

B. Specific Oversight Issues

Please comment on the following specific issues of oversight and accountability.

1. Covert Actions:

(a) Are there adequate mechanisms in place to ensure careful consideration of the legality, feasibility and desirability of covert action proposals ?

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(b) Do current structures within the Executive Branch ensure that the consistency of covert action proposals with U.S. foreign policy objectives is judged by officials with foreign policy responsibility and that the CIA does not become by default a policy-making institution ?

(c) Is there satisfactory oversight within the Executive Branch and the Congress of the way in which approved covert action operations are carried out ?

(d) Are there additional oversight mechanisms (e.g. some form of specific approval by the Congress) that you think desirable with respect to covert actions ?

2. Sensitive Intelligence Collection:

(a) Are there satisfactory controls over the legality of sensitive intelligence collection operations ?

(b) Are there mechanisms in place to ensure a proper degree of consideration (including obtaining objective opinion outside the operational sphere) of proposed sensitive collection operations which carry potential serious adverse consequences or raise serious questions of propriety?

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(c) Are the mechanisms in place sufficient to ensure that sensitive collection efforts are focused on intelligence collection targets of true significance ?

3. Operations Within the United States:

(a) Do existing mechanisms ensure compliance with legal restrictions on domestic operations ?

(b) Are there adequate checks on domestic operations to ensure that potential interference with individual rights and the integrity of private endeavors is held to a minimum and occurs only when justified by intelligence needs rising to an appropriate threshhold of seriousness ?

4. Quality of Intelligence:

(a) Are there adequate mechanisms to ensure that the United States is obtaining intelligence of the timeliness, reliability and quality necessary to the national security ?

(b) Are there sufficient protections to insulate the intelligence analysis and reporting process from political pressures or bias ?

(c) Is there an adequate system for independent evaluation of the quality of intelligence ?

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C. Possible Institutional Changes

Please briefly indicate your views as to the desirability of the following institutional changes which have been mentioned as possible ways to improve oversight and accountability in the Intelligence Community :

1. The present congressional oversight committees should be merged into a joint committee.

2. There should be a bipartisan National Intelligence Board within the Executive Branch (with members appointed by the President with the advice and consent of the Senate for staggered terms overlapping presidential terms) to oversee intelligence activities.

3. If there were such a National Intelligence Board, it should

a) Deal only with issues of oversight and propriety ;

b) assume responsibilities now held by the DCI for long-range planning, budgetary review and establishment of intelligence policy.

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6. Each major intelligence agency should have a General Counsel and an Inspector General appointed by the President with the advice and consent of the Senate.

7. The Director of Central Intelligence should be appointed, as is the Director of the Federal Bureau of Investigation, for a fixed term.

8. The respective functions of the principal intelligence agencies should be embodied in a statutory "charter".

9. A statutory charter should be adopted also to define rules on the conduct of intelligence activities now found in executive order.

10. There should be a national intelligence advisor to the President separate from any intelligence collection or analytic agency.

a) Such an official should exercise functions over the Intelligence Community similar to those of the DCI.

b) Such an official should play advisory role only and have no "line" authority.

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